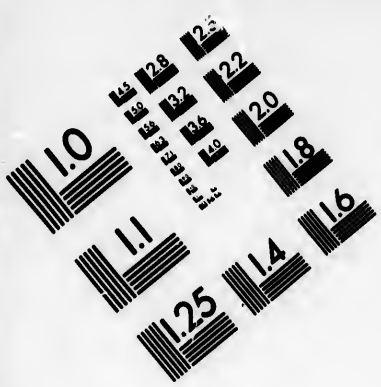
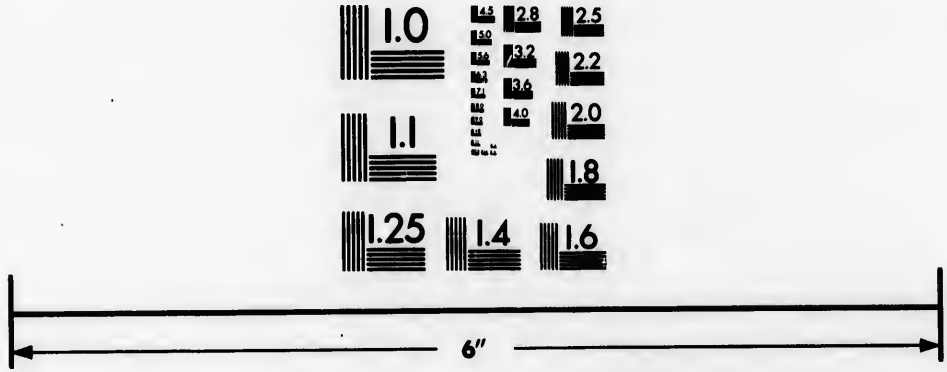


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☐ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
						X					

The copy filmed here has been reproduced thanks to the generosity of:

National Library of Canada

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:

L'exemplaire filmé fut reproduit grâce à la générosité de:

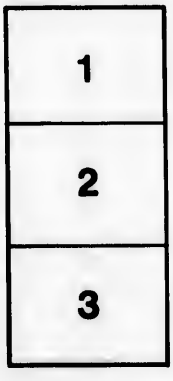
Bibliothèque nationale du Canada

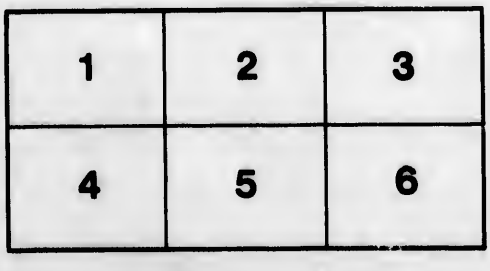
Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.





32X

THE

OREGON QUESTION;

OR, A STATEMENT OF

THE BRITISH CLAIMS

TO THE

OREGON TERRITORY,

IN OPPOSITION TO THE PRETENSIONS OF THE GOVERNMENT OF

THE UNITED STATES OF AMERICA.

Second Edition.

By THOMAS FALCONER, Esq.,

BARRISTER AT LAW OF LINCOLN'S INN, MEMBER OF THE ROYAL GEOGRAPHICAL SOCIETY, ETC.

LONDON:

SAMUEL CLARKE, 13 PALL MALL EAST.

1845.

LONDON:
PRINTED BY REYNELL AND WEIGHT,
LITTLE PULTENEY STREET.

PREFACE.

[FIRST EDITION.]

THE following pages are a reprint, with considerable additions, of an argument relating to the pretensions of the American government to the Oregon Territory, contained in a small work which I lately published, entitled, 'On the Discovery of the Mississippi, &c.' Some additions to it have been suggested by a work of a very intemperate character, written by Mr Farnham, and largely circulated in America, which contains statements that I could not have anticipated, and which it is right to notice. The subject itself, unfortunately, has obtained a new importance through the extraordinary conduct of the House of Representatives at Washington in passing a Bill for the Occupation of the Oregon Territory; a measure which, if it should become law, the general government of the United States is incapacitated to enforce, so long as it shall respect the solemn obligations of an existing treaty. It may be rejected by the Senate, and very probably will be, but there is too much reason to believe that the new Congress, which meets in December next, will entertain it with more favour, unless the impropriety and injustice of it shall be more generally understood in America than at present.

T. F.

PUTNEY, MARCH 12, 1845.

PREFACE.

[SECOND EDITION.]

WHILE preparing this edition for the press, a pamphlet 'On the Oregon Question' has been lent to me, written by Mr Sturgis, of Boston, Massachusetts. He has committed the errors of former American writers, in inferring public rights to have been established in the Oregon Territory before the year 1814, by the private acts of American citizens—though such acts conferred no rights whatever, either on the persons concerned in them, or on the government of the United States, but the object, temper, and ability of his argument are entitled to commendation. Some passages from it will be found in the following pages.

In showing the source of the errors which prevail in America, and what the strict rights of the British government are, I have been desirous to exhibit the moderation of the British government and the sincerity of its attempts to bring the dispute to a peaceful issue.

T. F.

PUTNEY, MAY 5, 1845.

THE

OREGON QUESTION.

THE discussions respecting the Oregon Territory involve an argument on the legal rights of the British government to the territory in dispute. They may portend a storm, and at present there is something unpleasant in them, from the violence of the language used in America, and the participation of the chief men of that country in attacks on the English government. But they may exhaust themselves, and there may be a calm for a time. Nevertheless, the necessity for the settlement of the dispute is urgent, whether hostility is intended, or pacific dispositions shall happily prevail.

The chief works published in America on the subject are—

1. The History of Oregon and California, and the other Territories on the North-West Coast of America. By Robert Greenhow, Librarian to the Department of State of the United States. Boston, 1844. 8vo, pp. 482. This work was first printed by the order of the Senate of the United States, and therefore has an official authority.

2. History of the Oregon Territory, it being a Demonstration of the Title of the United States to the same. By Thomas J. Farnham, New York. 1844. Pp. 80.

3. Report of a Committee of House of Representatives, of the 28th Congress, to whom was referred the Bill, No. 21, "to organize a Territorial government in the Oregon Territory, and for other purposes." March 12, 1844.

4. The Oregon Question. Substance of a Lecture before the Mercantile Library Association, delivered January 22, 1845. By William Sturgis. Boston (Massachusetts) 1845.

So much irrelevant matter is contained in these works, with the exception of the last mentioned one, that the

answer to them may be condensed in a few pages. The reply may, perhaps, be dry enough in being confined to the material facts of the case, but it is certainly not advisable to imitate the desultory tactics of the American disputants.

The district of country known by the name of the Oregon Territory lies between 42° and 54° 40′ of north latitude, and is bounded on the east by the Rocky Mountains. It extends about 760 miles from north to south, and averages about 500 miles in breadth, and it includes upwards of 360,000 square miles. (Sturgis, p. 4.) The foundation of the American claim to the territory chiefly depends on the extent of the country known by the name of Louisiana, at the time that it was purchased by the American government in 1803, and on the effect of a treaty made with the government of Spain in 1819.

The first French colony in Louisiana was established by a distinguished Canadian, named D'Iberville, under the authority of a commission from Louis XIV, granted to him for this express purpose, and the country remained subject to the dominion of France until the year 1762.

By the Treaty of Paris, agreed upon in November, 1762, and signed the 10th of February, 1763, and made between the governments of England, France, and Spain; the countries of Nova Scotia, Canada, and Cape Breton, were ceded to England, and the eastern limits of the remaining French settlements "were irrevocably fixed by a line drawn along the middle of the River Mississippi, *from its source* to the River Iberville, and from thence by a line drawn along the middle to this river and the Lakes Maurepas and Ponchartrain to the sea." The River and Fort of Mobile, and everything which France possessed on the left bank of the Mississippi being ceded, "except the town of New Orleans and the island on which it is situated."

By the 20th article of the same treaty, the government of Spain ceded to England that portion of North America called Florida, with Fort St Augustin and the Bay of Pensacola, and all that it possessed on the continent of North America to the east or south-east of the River Mississippi.

By a secret treaty made Nov. 3, 1762, and signed the same day on which the preliminaries of peace between Great Britain, France, and Spain were signed,—the

government of France ceded to that of Spain "all the country known under the name of Louisiana, as also New Orleans and the island on which that city is situated"—that is, so much of Louisiana as had not been agreed to be transferred by France to Great Britain.

On the 3rd of September, 1783, by the treaty made between Great Britain and Spain,--East and West Florida were ceded by Great Britain to the Spanish government, which thus became again possessed of these its ancient colonies.

By the treaty made on the 3rd of September, 1783, between Great Britain and the United States of America, the Independence of these States was recognised, and their north-western, western, and southern boundaries were thus described:—"By a line through the middle of Lake Erie until it arrives at the water communication between that lake and Lake Huron; thence along the middle of the said water communication into the Lake Huron, thence through the middle of the said lake to the water communication between that lake and Lake Superior; thence through Lake Superior, northward of the Isles Royal and Philipeaux, to the Long Lake; thence, through the middle of Long Lake and the water between it and the Lake of the Woods, to the Lake of the Woods; thence through the said lake to the most north-western point thereof; and from thence, on a due west course, to the River Mississippi; thence, by a line drawn along the middle of the said River Mississippi, until it shall intersect the northernmost part of the 31st degree of north latitude—south, by a line to be drawn due east from the determination of the line last mentioned in the latitude 31 degrees north of the equator to the middle of the River Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of the St Mary's River, and thence along the middle of the St Mary's River to the Atlantic Ocean."

There was one error in this otherwise clearly defined boundary:—the head waters of the Mississippi River are south of the Lake of the Woods, and, consequently, a line carried due west from the lake would not touch the river, The clear intention of both parties was to terminate the boundary where this junction was expected to take place—where, if the Mississippi had continued in a course N. it

would have intersected the line running due west from the Lake of the Woods. This obvious correction of the mistake is adopted in the map lately published in America by Mr Greenhow, in which a dotted line from the head waters of the Mississippi to the line running due west of the Lake of the Woods completes this boundary. But nothing west or north of this line was granted by Great Britain to the United States in 1783, and nothing north of the head waters, or source of the Mississippi, was retained by France under the Treaty of 1763.

On October 1, 1800, Louisiana was retroceded by Spain to France "with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other states." It was an act of retrocession, but it transferred so much less than France originally held, as had been shorn from it by the Treaty of 1763, which gave to Great Britain, and through Great Britain to the United States, nearly the entire eastern bank of the Mississippi.

In 1803, with the consent of Bonaparte, then First Consul, Louisiana was sold to the United States for eleven million of dollars. The purchase included all lands "on the east side of the Mississippi River [so as to include New Orleans], not then belonging to the United States, as far as the great chain of mountains which divide the waters running into the Pacific and those falling into the Atlantic Ocean; and from the said chain of mountains to the Pacific Ocean, between the territory claimed by Great Britain on the one side and by Spain on the other." *—('History of the Federal Government,' by Alden Bradford, LL.D., Editor of the Massachusetts State Papers. Boston, 1840. P. 130.)—No point was mentioned where the line in the chain of mountains was to commence, nor where the tract of land lay, forming a portion of Louisiana, lying between the territory claimed by Spain and Great Britain. France had nothing to sell but what constituted Louisiana after the cession made to Great Britain in 1763. There was, nevertheless, inserted in this treaty of sale a reference to a perfectly undefined line to the Pacific, having

* Mr Greenhow, in his elaborate work on the Oregon question, has omitted all notice of this very important passage.

no defined point of commencement, and referring to territory having no definable boundary either on the north, or the south, or on the east. But before the treaty for the purchase was completed, President Jefferson, in a letter dated August 12, 1803, wrote thus to Mr Breckenridge:—"The boundary which I deem not admitting question are the high lands on the western side of the Mississippi, inclosing all its waters—the Missouri, of course—and terminating in the line drawn from the north-western point, from the Lake of the Woods to the nearest source of the Mississippi, as lately settled between Great Britain and the United States. We have some claims to extend on the sea-coast westwardly to the Rio Norte or Bravo—and better to go eastwardly to the Rio Perdido between Mobile and Pensacola, the ancient boundary of Louisiana." It is evident, therefore, that, at this time, no French title to any line running beyond the mountains on the west was known to have existed.

In 1819, Don Louis de Onis was commissioned, on the part of the government of Spain, to confer with the government of the United States on the south-western boundary of Louisiana. The negotiations were terminated by the treaty called the Florida Treaty, signed at Washington on the 22nd of February, 1819. The south-western boundary of Louisiana had previously been the Arroyo, midway between Nachitoches and the Adeas, this having been the dividing line in 1762, before the cession of Louisiana to Spain. By this treaty the boundary west was fixed to be the River Sabine to the 32nd degree of latitude; thence due north to the Rio Roxo or the Red River of Nachitoches; thence westward along this river to the degree longitude 100 west from London (*quære*, Greenwich) and 23 from Washington; thence due north to the River Arkansas; thence to its source in 42 deg. latitude; or if the source is north or south of latitude 42 deg., along a line due north or south until it meets the parallel of latitude 42 deg.; and thence along this parallel to the Pacific.

Thus was the undefined line (ante, p. 8) from the Rocky Mountains to the Pacific mentioned in the agreement for the purchase of Louisiana converted into a defined line.

A sweeping clause was included in the Florida Treaty, by which the United States ceded to Spain and "re-

nounced for ever" all rights, claims, and pretensions to territories lying west and south of the described boundary, and Spain ceded to the United States all rights, claims, and pretensions to territories east and north of this boundary. On this clause the claim of the United States to the Oregon Territory chiefly depends. But as the treaty was negotiated in order to carry into effect the transfer of Louisiana, it is material to ascertain how far, to the west, this province extended when the sale of it was made.

The first notice of the western boundary of Louisiana, of any authority, is in the grant made, September 17, 1712, by Louis XIV to Crozat. This grant empowered him "to carry on exclusively the trade in all our territories by us possessed and bounded by New Mexico, and by those of the English in Carolina; all the establishments, ports, harbours, rivers, and especially the port and harbour of Dauphin Island, formerly called Massacre Island; the River St Louis, formerly called the Mississippi, from the sea-shore to the Illinois; together with the River St Philip, formerly called the Missouri River, and the St Jerome, formerly called the Wabash (the Ohio), with all the countries, territories, lakes inland, and the rivers *emptying themselves directly or indirectly into that part of the river St Louis.* All the said territories, countries, streams, and islands, we will to be and remain comprised under the name of 'THE GOVERNMENT OF LOUISIANA,' *which shall be dependent on the general government of New France, and remain subordinate to it;* and we will, moreover, that all the territories which we possess on this side of the Illinois be united, as far as need be, to the general government of New France, and form a part thereof, reserving to ourselves to increase, if we think proper, the extent of the government of the said country of LOUISIANA."

This document defined with tolerable precision the province of Louisiana. It was partly bounded on the west by New Mexico; it did not extend beyond the Rocky Mountains, for the rivers emptying themselves into the Mississippi have their sources on the east side of these mountains, and it was to reach the Illinois to the north. It was also declared that the government should be dependent on the general government of New France—that was, subject to the superior authority of the Governor of Canada. Some

years subsequently the Illinois was added to Louisiana. New Mexico bounded it, at least as high as 41 degrees, or above the source of the Rio del Norte. There was no strip of land to the west belonging to France, as mentioned in the purchase of 1803, "lying between the territory claimed by Great Britain on the one side and Spain on the other;" and Mr Greenhow admits "that we are forced to regard the boundaries indicated by nature—namely, the highlands separating the waters of the Mississippi from those flowing into the Pacific or the Californian Gulf—as the true western boundaries of Louisiana, ceded to the United States by France in 1803."—(Greenhow, p. 283.)

One consequence, therefore, is, that the purchase of Louisiana included so much territory as was bounded on the north by a line running from *the source* of the Mississippi due west to the mountains (ante, pp. 6 and 7); on the west by the mountains; on the east by the River Mississippi; and on the south by the Gulf of Mexico.

A still more important consequence is, that the title to the territory claimed by the United States, west of the mountains—so far as it depends on any alleged *Spanish* rights—dates from the year 1819, and is derivable from the Florida Treaty made with Spain, and not from the purchase of Louisiana.

The agreement with France in 1803 professed to give "a line" across some country lying between the territory claimed by Spain and Great Britain, which the government of France had no title to interfere with, and the Florida Treaty of 1819, which was made between Spain and the United States, in order to carry into execution the treaty made between France and the United States, defined the northern boundary of Mexico to be a line running along the 42nd parallel of latitude, from the mountains to the Pacific, and accompanied it with a cession of Spanish rights to the north (ante, p. 9 and 10). On the conclusion of the Treaty of 1819, it was contended, on the part of the United States, that Great Britain had no title to any territory north of the 42nd parallel of north latitude, on the ground that no other country but Spain had a right to such territory. It is, therefore, material to ascertain what were the English claims to the Oregon Territory prior to the year 1819, that is, to the territory not forming a part of Louisiana in 1803.

The government of Spain during its possession of Mexico never made any settlement on the western coast north of Cape Mendocino (lat. 40 deg. 29 min. N.) It was a vacant territory, subject to the same rules of settlement that had governed the settlement of other portions of North America. "Having touched only here and there upon a coast," said Queen Elizabeth to the Spanish Ambassador, "and given names to a few rivers or capes, where such insignificant things as could no ways entitle them (the Spaniards) to a propriety farther than in the parts where they actually settled and continued to inhabit." And the principle embodied in this speech has been the rule acted on by nearly every European nation.

The discovery of part of the coast north of Cape Mendocino was made by Drake in the year 1578, as far, perhaps, as 48 deg. north latitude. But as the English made no settlement until about the year 1790, the interval of two centuries would establish the fact of an abandonment of an intention to settle, if before the year 1790 the government of any other country had made a settlement on the coast; for there can be no question, that mere discovery is not alone a complete title to new territory. Any claim, therefore, set forth on the mere ground of discovery, is not to be relied on, even if the northern limits of Drake's exploration of the coast could be distinctly proved.

The first voyage made by the Spaniards along the western coast of America, which it is necessary to notice, is that made by Juan Perez in 1774.* The last voyage previously made by the Spaniards on this coast occurred as far back as the year 1603. No official account of the expedition of Juan Perez has been published, but it has been inferred that he discovered *Nootka Sound;* though it is admitted, at the same time, that the discovery of this important harbour is by general assent assigned to Captain Cook; and that the government of Spain "has deprived itself of the means

* Lieut.-Col. J. N. Colquhoun, R.A., has been good enough to give me the following note:—In 'Villa Sénor,' Teatro Americano, printed in Mexico in 1747 and 1748, California is stated (vol. i, p. 21) to reach the latitude north of 45 deg. 12 min., but the impression then existed that California was an island. In the second volume, which was printed two years later, it is stated (p. 272) that California is known to be united to the continent, and that it extends from 23 deg. to 41 deg. north latitude.

of establishing beyond question the claim of Perez to the discovery."—(Greenhow, p. 117.)

On the return of Perez another expedition was sent to the North Seas by the Spanish government. It consisted of two vessels, the 'Santiago,' commanded by Don Bruno Heceta, and the 'Sonora,' commanded by Don Juan Francisco de la Bodega y Quadra, who succeeded Ayala after the vessel sailed, and who had with him Maurelle as pilot. Soon after leaving the Isle de Dolores, north of the Columbia, the vessels parted company. Bodega proceeded north beyond the 56th degree of latitude, and examined the coast now belonging to and possessed by Russia. The 'Santiago' returned, and on the 15th of August, 1775, Heceta observed an opening in the coast in lat. 46 deg. 17 min., from which rushed a current so strong as to prevent his entering. This fact convinced him of the existence of a river, and he placed it on his chart, under the name of the Rio St Roc.—(Greenbow, p. 130.) This is the first notice of the Columbia River.*

In the year 1778 Captain Cook visited the west coast of North America, to which Drake had given the name of New Albion. On the 7th of March he reached the coast in 44 deg. of north latitude. He continued his exploration north, but passed the Columbia River without observing it. He discovered Nootka Sound, among other places, and having reached the land at the foot of Mount Elias (lat. 60 deg. 18 min.), continued his course round the coast to the Aleutian islands. This was the first voyage in which any survey of the coast that can be relied on, or that even deserves the name, was made.

In 1779 Spain became involved in a war with Great Britain, and its flag did not again appear on the coast north of Cape Mendocino until 1788.—(Greenhow, p. 126.)

In 1789 the seizure was made of the 'Iphigenia,' the 'Argonaut,' the 'North-West America,' and the 'Princess,' at Nootka, by the Spanish captain, Martinez. Meares, the Englishman chiefly concerned in the adventure and trade in which they were engaged, may, and certainly seems to, have misrepresented several facts connected with it; he

* M. Duflot de Mofras states that M. Verendrye had previously obtained some information of the existence of the river, but he did not reach it, and the account given of his travels is very vague and unsatisfactory.

may have hoisted other colours than British, in order to evade a supposed infringement of the rights of the East India Company; and he may have demanded and obtained, as always happens in demands for indemnification, more than was actually lost; but Martinez certainly exceeded his authority, for he was specially instructed by the Viceroy of Mexico not to capture any British vessels on the north-west coast. The personal facts of the case are not of the slightest importance; the only question arising from them is, whether or not the English or any other foreign nation had a right to trade on the coast, or, at that time, to make settlements upon it?

Now, it is a clear and admitted fact that the goverment of Spain never made any settlement north of Cape Mendocino. The whole coast for upwards of 25 degrees north of this cape was waste, unsettled, and unoccupied. Throughout the whole distance there was no person authorized to execute authority on the part of Spain, or any other power at any single point.

The right of making settlements under such circumstances as these has been argued by Mr Greenhow, and his argument is too important, upon account of its admissions, to omit. He says—

"It should be observed with regard to the right of the Spanish government to take possession of Nootka, that before the 6th of May, 1789, when Martinez entered the sound with that object, *no settlement, factory, or other establishment whatsoever, had been founded or attempted; nor had any jurisdiction been exercised by the authorities or subjects of a civilized nation in any part of America, bordering upon the Pacific, between Port San Francisco, near the 38th degree of north latitude, and Prince William's Sound, near the 60th.* The Spanish, the British, the Russians, and the French had, indeed, landed at many places on these coasts, where they had displayed flags, performed ceremonies, and erected monuments, by way of 'taking possession,' as it is termed, of the adjacent territories for their respective Sovereigns; but such acts are, and were then, generally considered as empty pageants, securing no real rights to those by whom or in whose names they were performed. Nor does it appear that any portion of the abovementioned territories had become the property of a foreigner, either by purchase, occupation, or any other title which can be regarded as valid.

"The right of exclusive sovereignty over these extensive

regions was claimed by Spain in virtue of the Papal concession in 1493, of the first discovery of the coast by Spanish subjects, and of the contiguity of the territories to the settled dominion of Spain. Of the validity of the title derived from the Papal concession, it is needless in the present day to speak. That the Spaniards were the first discoverers of the west coasts of America, as far north as the 50th parallel of latitude, has been shown; and the fact is, and ever has been, since the publication of Maurelle's 'Journal' in 1781, as indisputable as that the Portuguese discovered the south coasts of Africa. The extent of the rights derived from discovery are, however, by no means clearly defined by writers on public law; and the practice of nations has been so different in different cases, that it seems impossible to deduce any general rule from it. That a nation whose subjects or citizens have ascertained the existence of a country, previously unknown, should have a better right than any other to make settlements in that country; and, after such settlement, to own it, and to exercise sovereignty over it, is in every respect conformable with nature and justice; but this principle is liable to innumerable difficulties in its application to particular cases. It is seldom easy to decide how far a discovery may have been such, in all respects, as should give this strongest right to settle, or to what extent of country a title of sovereignty may have been acquired by a particular settlement. And even when the novelty, or priority, or sufficiency of the discovery is admitted, the right of prior occupation cannot surely be regarded as subsisting for ever, to the exclusion of all other nations; and the claims of states occupying contiguous territories are always to be taken into 'consideration.'"

Notwithstanding the alleged difficulty of determining when the government of a country, which has no title to occupy a vacant territory by reason of discovery, may occupy it as abandoned, the practice in such cases has been tolerably uniform. Discovery alone, and an alleged intention to occupy, certainly do not give a perfect title. Actual occupation is requisite to make the title complete. Nor does the discovery of part of a great territory entitle the first settlers to take the whole. For instance, the continent of North America was first discovered by the English under Cabot;* but the right, nevertheless, of the

* "The ambition of Henry VIII was roused by the communications of Columbus, and in 1495 he granted a commission to John Cabot, an enterprising Venetian, then settled in England, to proceed on a voyage of discovery, and to subdue and take possession of any lands

French to settle on it was never questioned. The southern part of the same continent was occupied by Spain, but the French, nevertheless, made the contiguous settlement of Louisiana, having previously occupied Nova Scotia and Canada. Where there is clear evidence of abandonment —where the discovery is not followed by preparations to occupy, a settlement may be made in opposition to a title of discovery. Where, also, the territory can be separated by any natural and distinct boundary—whether that of distance from prior settlements, or the physical facts of mountains or deserts—a settlement can be made in opposition to any previously made.

But "a settlement" must be understood to mean the establishment of the laws or government of the persons making the settlement, with the consent and authority of the nation to which they belong. Without such an authority they are mere outcasts and vagabonds on a desert, and have no right to form a government of themselves. A colony of the mother country—that is, a body of settlers among whom the law of their country can be administered —can only be formed by the consent of their own government. Discoveries actually accompanied by occupation, without such consent, do not entitle settlers to assert any of the rights of their own government, or to exercise any

unoccupied by any Christian power, in the name and for the benefit of the British Crown. In the succeeding year Cabot sailed on his voyage, and having first discovered the Islands of Newfoundland and St John, he afterwards sailed along the coast of the continent from the 56th to the 38th degree of north latitude, and claimed for his sovereign the vast region which stretches from the Gulf of Mexico to the most northern regions."—('Story's Commentaries on the Constitution of the United States,' vol. i, pp. 3 and 4.) But though the discovery of the coast was first made under the authority of the English government, the earliest charter for the permanent settlement of America, granted to Sir Thomas Gates by James I in 1606, gave to him 'the territories in America, then commonly called Virginia, lying on the sea-coast between the 34th and the 45th degrees of north latitude and the islands adjacent within 100 miles, *which were not belonging to or possessed by any Christian prince or people.*'"— ('Story's Commentaries,' vol. i, p. 22.) Mere discovery alone was not relied on as a sufficient title to the country. It is true that a title to the territory of New York was asserted by the English against the Dutch, notwithstanding a prior occupancy of the country, on the ground of discovery, but the reasons given in former times for aggression are not to be defended. Public morality has fortunately improved in Europe, while some of the worst of European precedents are now cited as authority in the United States.

power, even of the most inferior description, under the pretence of being a colony. A settler can only have the authority that is delegated to him, and without such a delegation he has no power. His occupation of new territory may be subsequently recognized by his own government; but, unless it is so recognized, prior to any settlement being made by the authority of some other government, it does not become a dependency of the nation of the settler.

At the time the English were at Nootka there was no Spanish settlement on the coast. It was open to any nation to make a settlement, or to recognize any that had been made by its subjects even without authority.

When the news arrived in England of the seizure of the vessels by Martinez, the British government claimed the right to have indemnification made to their owners; it determined to recognize any settlement that had been formed, and it expressed its intention to make settlements on the west coast of America. On the 5th of May, 1790, a message of the Crown was delivered to Parliament, complaining "that no satisfaction was made or offered for the acts of seizure, and that a direct claim was asserted by the Court of Spain to the exclusive rights of sovereignty, navigation, and commerce, in the territories, coasts, and seas in that part of the world." The message was received by Parliament with much approbation, and the necessary supplies were very liberally granted to enforce the claims of the Crown.

In the declaration of the government of Spain, dated Aranjuez, June 4, 1790, signed by the Conde de Florida Blanca, it is said that, "although Spain may *not* have establishments or colonies planted upon the coasts or in the ports in dispute, it does not follow that such coast or port does not belong to her." The British government alleged "that English subjects had an indisputable right to the enjoyment of a free and uninterrupted navigation, commerce, and fishery; and to the possession of such establishments as they should form, with the consent of the natives of the country not previously *occupied* by any European nation."

On the part of Spain there was no declaration of an intention to occupy; and, on the other side, there was no

assertion of a right to occupy in case occupation had been already taken by an European power.

The dispute was terminated by the convention between Great Britain and Spain, signed at the Escurial, October 28, 1790. By the third article it was agreed that "the respective subjects of the contracting parties should not be molested in navigating or carrying on their fisheries in the Pacific Ocean or in the South Seas, or in landing on the coasts of those seas, in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of *making settlements* there." But this article was subject to the restriction, that the government of Great Britain should prevent an illicit trade with the Spanish settlements, and that the British should not navigate or fish within ten leagues of the coast *already occupied* by Spain. And it was by the fifth article agreed, that as well in the places restored as "in all other parts of the north-western coasts of North America, or of the islands adjacent, situated to the north of the parts of the said coast already occupied by Spain, wherever the subjects of either of the two powers shall have made *settlements* since the month of April, 1789, or shall hereafter make any, the subjects of the other shall have free access."

This convention was an admission of the right of the British government to make settlements, and the right it sanctioned is not be distinguished from the undisputed right of Russia to its present settlements on the north-west coast. The admission of this right was not granted as a licence, liable to be revoked or lost by a war—it was not made as a favour or concession. It is one of those agreements respecting territory—such, for instance, as the Treaty of 1783, made between Great Britain and the United States—which a war does not revoke. It declared existing rights, and after the war between Great Britain and Spain, it was regarded to be still in force. "It was in the nature of a compromise, and if it is held to be rescinded, then the British rights become absolute as they were before it existed."—(See 'The Times,' March 31, 1845.) The admission contained in the convention is of a principle to which the States of America, the colony of Canada, and the State of Louisiana, owe their existence. No new doctrine was set up. An old established rule was recognized, and a war would have been the result if it had continued to be contested.

Mr Adams, whose long and distinguished career in the highest offices of his country had made him familiar with these questions, was compelled to treat it as a definitive settlement of a general principle of national law.—(Greenhow, p. 341, n.) And the President Munroe, in his message of December 2, 1823, admitted that no new principle had been asserted in the claims of Russia, and of Great Britain, to settle on the coast, but that the occasion had been found proper for asserting that "*henceforth* the American continents were not to be considered as subjects for future colonization by any European power"—a declaration against which the Courts both of Russia and of Great Britain protested.—(Greenhow, p. 336.)

The convention did not exclude Spain from making settlements if it should think fit; but on the part of Spain the right of Great Britain to make them was acknowledged, and the intention and right of making one at Nootka Sound was especially declared and allowed.

Much of the difficulty which has arisen upon this subject would have been avoided if the terms employed in this convention had been attended to. It was not the intention of the English government to let loose a body of men upon the west coast of America, free to act as they pleased, and to exhibit their passions in the licence and violence of a lawless condition. Nor was it the intention of the Spanish government to establish its law over them. The proposed "settlements" were to be those of a civilized nation, and necessarily implied their subjection to English law; and this, not for a temporary object, but in order to occupy the country, according to the open and distinct declaration of this purpose contained in the previous official correspondence.

When the convention was communicated to Parliament, it became the subject of party discussion, as every important communication to a popular assembly will be. The just and wisely-arranged treaty lately made between Great Britain and the United States respecting the north-eastern boundary of the United States—a treaty which ought, beyond all others, to have been accepted with unanimous approval, being a most honourable settlement of a most complex question, did not escape the bitter though fortunately impotent criticism of a party opposition. Such attacks, when great interests are at stake—when

unanimity might be instructive and no principle is compromised—may be regretted, but the language of them is not to be adopted in the interpretation of the policy of those whose acts are condemned. Mr Fox, Lord Grey, and the Marquis of Lansdowne contended that by the convention of the Escurial, nothing had been gained and much surrendered, "If the English," said Lord Grey, "form a settlement on one hill, the Spaniards may erect a fort on another." The English ministers did not enter into an explanation. They had not demanded the supplies, which enabled them to put afloat a great armament, in order to effect so absurd an arrangement as that described by the opposition, and Mr Pitt was too sagacious to have committed the blunders imputed to him. The instructions given to Captain Vancouver, who was commissioned to sail to the north-west coast of America, and to take possession of Nootka Sound, and to ascertain what parts of the coast were unsettled, were an official interpretation of the convention, and they certainly appear to have been drawn up in conformity with an agreement with the Spanish government. On the 4th of June, 1792, after the survey of a considerable extent of coast, Captain Vancouver, at Possession Sound, took possession, "with the usual formalities, of all that part of New Albion from the latitude 39 deg. 20 min. south, and longitude 236 deg. 26 min. east to the entrance of the inlet of the sea said to be the supposed Strait of Juan de Fuca, as also of all the coasts, islands, &c., within the said strait and both its shores."

On the 23rd of June, Captain Vancouver met the Spanish schooners, the 'Sutil' and the 'Mexicana,' under the command of Galiano and Valdes. The communications between the commanders were of the most friendly character. At Nootka, Vancouver met the 'Dædalus,' which brought instructions from the British government, and he was referred to a letter, received by the same ship, from the Count de Florida Blanca, addressed to the commandant of the Fort of San Lorenzo at Nootka, ordering that officer, in conformity with the first article of the convention, to put his Britannic Majesty's commissioners in possession of the buildings and districts, or parcels of land which had been occupied by the English in April, 1789, as well in the port of Nootka as in Port Cox, situated about sixteen leagues further southward.

It is impossible to understand how it could have been inferred from these events that Great Britain and Spain had agreed to a "joint occupancy" of the country. The British government claimed the right, which it asserted was common to any civilised government, to take possession of vacant wastes. It never pretended to claim a joint occupation with Spain—for it was admitted that Spain did not "occupy" the country—but simply a right *common* to it, Spain, &c., to settle in countries beyond the limits of any civilized government. This right being acknowledged, Vancouver took possession of the country from 39 deg. 20 min. to the Strait of Juan de Fuca. This possession was taken, under the instructions of the British government, exclusive of Spain. It was an act indicating the construction of the Nootka Convention by the government of Great Britain. Nor is this all. The proceedings of Vancouver were published with the sanction of government in 1798. There was no concealment of what had been done. The official act by which the country was annexed to the British Crown was notified to all the world, and it was not followed by any remonstrance or adverse claim.

How, under these circumstances, could "joint occupation" be inferred? If there had been joint occupation, there must have been "joint law" administered—or, in fact, no law. The absurdity is convenient, in order to complicate the subject, but it has no foundation in the events of the Nootka contest.

The correspondence between Vancouver and the Spanish commandant, Quadra, differed respecting the extent of cession to be made; and they agreed to submit the matter to their respective governments.

The expedition of the 'Sutil' and the 'Mexicana' in 1792 was the last made by the Spanish government with the object of discovery in the North Sea. After this the Spaniards abandoned the coast in dispute, and never attempted to form an establishment upon it.—(Greenhow, p. 257.) The order for the abandonment of Nootka was not merely sent by the 'Dædalus,' but was communicated to that most eminent Viceroy of Mexico, the Count de Revillagigedo,—a name ever to be honoured.—(Greenhow, p. 227, n.)

After having taken possession of Nootka, Vancouver proceeded on a survey of the coast. Meeting with the

American vessel the 'Columbia,' commanded by Gray, he was informed of the river noticed by Heceta, into which Gray had entered and named after his vessel. Broughton was sent to examine the river, and passed the bar. His survey extended inland for upwards of one hundred miles from where he anchored his ship. "Previously to his departure he formally took possession of the river and the country in its vicinity in his Britannic Majesty's name, having every reason to believe that the subjects of no other civilized nation or state had ever entered the river before. In this opinion he was confirmed by Mr Gray's sketch, in which it does not appear that Mr Gray either saw or was ever within five leagues of its entrance." *

---

* The very bitter tone in which Mr Greenhow speaks of Captain Vancouver, and his complaint that Captain V. endeavoured to deprive Gray of the honour of having seen the Columbia River, are not justified by the facts of the proceeding referred to. It appears by the log-book of the 'Columbia,' that Gray crossed the bar of the river on the 11th of May, 1792. At one o'clock he anchored. At noon of the 14th he weighed anchor; at four o'clock he had sailed upwards of twelve or fifteen miles, and at half-past four o'clock the ship took ground, when she was backed off and again anchored. On the 15th Gray dropped down the river, and the subsequent movements were to get the vessel out. On the 20th he got clear of the bar. The river he named the Columbia, and called one point of the entrance Adam's point, and the other Hancock's point.

These facts are no doubt correct. The log-book has been printed in reports of committees of Congress, and the copy verified by affidavit, in the belief that it contradicts the English statement of the case.

Captain Vancouver states (vol. ii, p. 53), that Broughton had with him a chart made by Gray—that he got to an inlet which he supposed the chart to represent, and passed Adam's point. After a minute description of the inlet, he says:—"This bay terminated the researches of Mr Gray, and to commemorate his discovery it was named 'Gray's Bay.'" This certainly proves that there was no wish to avoid acknowledging Gray's merits. The inlet from the sea to the river runs about east and west, and in the chart of Vancouver "Gray's Bay" is placed east of Adam's point, and far inland. On the 24th of October (1792) Broughton left the 'Chatham' in lat. 46 deg. 17 min., having brought it as far within the bay as he thought safe, and as far as he had reason to suppose the 'Columbia' had been brought.—(Vancouver, vol. ii, p. 56.) He then proceeded to survey in a boat, taking with him a week's provisions. He proceeded up the river until the 30th, and calculated the distance he went, and which he particularly describes, "from what he considered to be the entrance of the river, to be eighty-four, and from the 'Chatham' 100 miles." That is, that the

Recognizing the merit of Gray, and admitting the claim that he is the first person who noticed the Columbia River after Heceta, who had placed it on his chart within one mile of its true position,—still no claim can be set up on this account by the United States. The *discovery* of a river, after the coast adjoining it has been discovered, has no peculiar virtue to exclude rights connected with the discovery of the adjoining coast. Before Gray entered the river, the outline of the entire coast had been traced. The *possession* of a river may be followed with important inland rights; but Gray neither discovered it for the first time, nor had authority to take possession of it. In the discovery he had been anticipated by Heceta. He had no power "to take possession" of the country, for he was in a private ship, pursuing his private affairs; and the private acts of an American citizen in such matters are of no more importance than similar private acts of English subjects.

The discovery of Gray has been put forth by the Ame-

---

entrance of the river was sixteen miles (upwards of five leagues) above where he left the 'Chatham,' and consequently above where Gray anchored. He therefore came to the conclusion that Gray did not see what he called and explained to be "the entrance," and this conclusion is sustained by the distance mentioned in Gray's own log-book.

Thus the statement of Broughton and that of Gray are perfectly consistent, and there is nothing in Vancouver's relation of the facts of the case to justify the charge "that he possessed good temper and good feelings, except with regard to citizens of the United States, against whom and their country he cherished the most bitter animosity." So far from this being so, he makes the fullest acknowledgment of Gray's services—he retained the name of "Adam's point" on his chart, and he adopted that of Gray's ship, the 'Columbia,' as the name of the river. The error that Mr Greenhow has made has arisen from his taking a single sentence without the context. The inlet may be considered as part of the river, but Broughton was justified in thinking it to be an arm of the sea. He concealed nothing, and gave his reasons for distinguishing the entrance of the river from the entrance to the inlet, for which he had the practice and authority of navigators. So far from misrepresenting the facts, the very evidence of Gray's log-book, which is produced to contradict him, verifies his statement. The veracity of Vancouver can never be disputed. He exhibited an anxious care to recognize the previous discovery of Gray, and no American who shall read the whole account—though he may say that the entrance to the river is the entrance to the inlet—can come to the conclusion that any fact has been misrepresented, or that there was any attempt to do injustice to Gray. If Broughton had not explained what he meant, there would have been reason to complain.

rican government as the foundation of a title to the country. It took place in 1792; and therefore, if the government of Spain had any title to grant territory reaching to the Columbia, when it made the Florida Treaty in 1819, Gray's proceedings ought not to have been relied on by the government of the United States, in the previous negotiations with the English government in 1814. In order to have been authorized in 1814 to derive any public rights from the proceedings of Gray adverse to Spanish rights, if any such existed, the government of the United States ought to have shown that these proceedings were hostile, and were an invasion of Spanish territory. Gray, however, being a private person, could not have committed an act of public hostility. The setting up, therefore, of a title to the country, in 1814, on the ground of this discovery, was an admission, by the American government, that no Spanish rights existed, and that the country was, in 1792, open to be occupied by persons having the official authority of their government, as Vancouver had—and as Gray might have had, if it had been, at that time, in accordance with the policy of his government, to have given such an authority. Such an admission—and it has been formally and officially made—is destructive of any alleged right to the country, derivable from Spain through the Florida Treaty made in 1819.

The "taking possession" of new countries by authorized official persons in the formal manner that it was done by Vancouver, is not the idle ceremony Mr Greenhow represents it to be. By the law of England, the Crown possesses absolute authority to extend its sovereignty; it can send its diplomatist to treat for, its soldier to conquer, its sailor to settle new countries. This it can do, independently of Parliament; and no act of the ordinary legislature is needed to establish English law and authority in such countries. A power of legislation is absolutely vested in the Crown for these purposes, which it can execute through the officers it may name. It can, also, as is well known to all Americans, legislate for such settlements independently of Parliament; or it may delegate its own power of legislation. The charter of Rhode Island granted by Charles II, in the year 1663, and under which that State was governed until the year 1842, is an illustration of such legislation, and of the delegation of such authority. The Crown in that case, by its own legislative act, estab-

lished English laws in that colony, and delegated its power of legislation to a very popular local legislature.

The "taking possession," therefore, of a new country by persons officially authorized—and no private person can assume the authority—is the exercise of a sovereign power, a distinct act of legislation, by which the new territory becomes annexed to the dominions of the Crown.

These principles were lately insisted on by the government *against* British subjects:—

"'Neither individuals,' said Governor Sir George Gipps, in a most luminous and admirable argument (New Zealand papers, May 11, 1841, No. 311, p. 64), 'nor bodies of men belonging to any nation, can form colonies except with the consent and under the direction and control of their own government; and from any settlement which they may form without the consent of their government they may be ousted. This is simply to say, that as far as Englishmen are concerned, colonies cannot be formed without the consent of the Crown.' —'I thought a declaration of the nature of that which stands in the preamble necessary, upon the same grounds that it was thought necessary by the Committee of the House of Commons in 1837, and I think it is the more necessary now, when I see the gross ignorance which prevails upon this subject even among persons otherwise well informed,—when I hear persons, and even lawyers, contend that Englishmen may set up a government for themselves wherever they like, and regardless alike of the Queen's authority and their own allegiance. Why, Captain Cook had as much right to purchase New Zealand for himself when he discovered it, or I had as much right to purchase the island of Tongatoboo from the chief of that country, who came to visit me the other day, as Mr Wentworth had to purchase the Middle Island of New Zealand from the savages who were in Sydney in February last. When I cast my eye over the vast Pacific, and the innumerable islands with which it is studded, and consider that one man may seize an island here and another an island there, and that by dint of making themselves troublesome, they may in the end render the interference of the government necessary, it is time to let people know that the law of England does not admit of such practices.'"

The constitution of other countries vests a similar sovereign authority in the Crown to that existing in Great Britain; but under the American constitution the President has no authority of the kind; he cannot annex

territories to existing States, nor by his own act enlarge the boundaries of American dominions. The constitution has, in its first article, vested "all legislative power" in Congress. Before, therefore, the sovereignty of the United States can be established in a new territory, there must be an equivalent act of legislation by Congress to that necessary to be performed by the English Crown. How otherwise is it to be known to what country the territory belongs?

After a country has had a new territory formally annexed to it, there doubtless remain other acts to be performed to complete the title, such as actual settlement, &c.; or, otherwise, the inference of other countries is that the intention to occupy is abandoned. But the prior right to settle continues, even if there is a ground to imagine an intention to abandon, until some other country shall actually, and according to the forms which its laws sanction, establish its own laws and authority in the new territory.

In 1805, Louis and Clarke, who had been commissioned in the previous year, by President Jefferson, to explore the country west of the Rocky Mountains, reached the Columbia River, and returned to the United States in 1806. But this act of exploration, not resting on an original right of discovery, nor accompanied by any act of American legislation respecting the country, nor by any attempt to occupy, clearly does not establish a title to the territory west of the mountains. Nor is such a title set up. "Politically," says Mr Greenhow, "the expedition was an announcement to the world of the intention of the American government to occupy and settle the countries explored."—(Greenhow, p. 288.) But such an intention had already been announced to the world by the English government in a public, authentic, and legal manner, and its sovereignty over the country had been officially declared.

In 1810 Captain Smith, from Boston, built a house on the south bank of the Columbia, but abandoned it before the close of the year. This was the act of a private person, and no political inference can be drawn from it.

In the same year Jacob Astor, of New York, formed the "Pacific Fur Company." He communicated his intention to the British North-West Company, and offered to it

one-third of the interest of the scheme. The proposal was not accepted; and it is asked "if Mr Astor, a citizen of the United States, was justifiable in thus offering to an association of British subjects, noted for its enmity to his adopted country, a share of the advantages to be obtained under the flag of the United States, from territories exclusively belonging to the United States, and of which the exclusive possession by the United States was evidently essential to the advantage and welfare of the republic ?"—(Greenhow, p. 294.) An English subject would have been free to make such an offer. Exclusive possession of the country by the United States certainly did not exist, for it had not taken any step either to claim, to possess it, or to annex it. When the company was formed, "the majority not only of the inferior servants, but also of the *partners*, were British subjects."—(Greenhow, p. 295.) They made an establishment on the Columbia River, but in consequence of difficultics, Macdougall and Mackenzie announced their determination, on the 1st July, 1812, to dissolve the company, and Mr Hunt, another of the partners, in August, 1813, acceded to it. On the 16th of October, 1813, an agreement was made between Messrs Mactavish and Alexander Stuart, on the part of the British North-West Company, and Messrs Macdougall, Mackenzie, and Clarke, on the other part, by which all the establishments, furs, stock in hand, of the Pacific Company, in the country of Columbia, were sold to the North-West Company for about 58,000 dollars. The difficulties which caused this dissolution might, it is said, have been overcome, "if the directing partners on the Columbia had been Americans instead of being, as the greater part were, men unconnected with the United States by birth, or citizenship, or previous residence, or family ties."—(Greenhow, p. 305.) It was, therefore, a settlement made by a majority of English,—not under the orders of the government of the United States—and the sovereignty of the English government having been declared over the country, they were amenable to English laws. Mr Astor could not annex the territory to the United States, and his sole object was to obtain furs. Shortly after the sale was made, a British sloop of war, the 'Racoon,' reached the Columbia, and the name of Fort George was given to the establishment.

Supposing, however, that the war between Great Britain

and the United States had not broken out about this time, and that the 'Racoon' had brought to Columbia a judge, or a commission to any of the partners, to act as judge in the civil and criminal affairs of the colony, could the United States, or any other country, have insisted that he could not have exercised jurisdiction? Could any persons who were there have exempted themselves from the jurisdiction of such a court? But, on the other hand, let it be supposed that the President of the United States had sent a commission to any person to administer the law there, would that commission have been operative? Would the Supreme Court of the United States have held, that in countries over which the legislature of the United States has not established its law,—which had not been legally subjected to the authority of or possessed by its government—that the President could deal with men's lives, with their fortunes and property, or govern beyond the jurisdiction of American law? The United States had not annexed the Oregon to its territory. It formed no part of any existing State; and it was not a portion of a territory over which it had legislated, or even claimed to legislate.

The British government, on the contrary, had declared its intention to establish its law there, and it had attached the country to its dominions in a formal and authentic manner. When the North-west Company took possession of the establishment in 1813, an authorized colony of British subjects from that moment was formed, subject to and governed by English laws—an actual occupation of the country was made, and a settlement on the river has continued until the present day. The company was legally empowered to make such a settlement, and when made the English law prevailed over it.* A more perfect title could not be proved.

At the termination of the war between Great Britain and America, a demand was made for the restoration of the post sold by Mr Astor's partners, as a portion of the territory of the United States taken during the war. The answer was, that it had not been captured; that the

* The attempt to involve in this discussion a consideration of the merits of the Hudson Bay Company may mislead some persons in this country, who object to "monopolies," but the government of the United States know too well that with the Company they have no quarrel.

Americans had retired from it under an agreement of sale; that the North-west Company had purchased it; that the territory had early been taken possession of in his Majesty's name, as it had been by Broughton in Vancouver's expedition, and that it had been since considered to form a part of his Majesty's dominions.—(Greenhow, p. 307.) It was, however, agreed that the post should be restored, and "that the question of the title to the territory should be discussed in the negotiation on limits and other matters, which was soon to be commenced."* If under the pressure of expected hostilities, the post had been sold, it would not be just to assert that it had been voluntarily abandoned; but in order to have deprived the transaction of its private character, and to have made the post a proper subject of a public demand, it ought to have been proved that the post was, at the time of the sale, within the jurisdiction of the government of the United States.

This negotiation and its temporary settlement deserve particular notice. The United States contended that it had a right to the territory; it asserted this right in the most formal and solemn manner, and it received possession of the post in consequence of its official remonstrance. Now it matters not whether its title, as against Great Britain, was valid or not. After this arrangement it could not, without violation of its honour and a breach of its engagements with Great Britain, enter into a treaty with Spain affecting the post in dispute; nor can it allege a title to it through Spain, without proclaiming to the world that the assertion of its pretensions in 1814 were without foundation, and that it knew them to be without foundation. This act of dishonour it must admit, if the Florida Treaty of 1819 is alleged to confer any title. A title in 1814, and a title under the Treaty of 1819, are utterly inconsistent. If the Treaty of 1819 is relied on, then it must

* I cite this statement in the words of Mr Greenhow (p. 308), because in subsequent pages, which he heads 'British Views of National Faith' (310, 312), he declares that Fort George was delivered up without any reservation or exception, and expresses his disbelief that Sir Charles Bagot, the British minister, communicated to the American government, in pursuance of Lord Castlereagh's direction of the 4th of February, 1818, the fact that Great Britain claimed the territory, and insisted that the American settlement was an encroachment. The delivery was clearly the execution of the conditional agreement mentioned in the text.

be admitted that Great Britain was "in occupation" in 1814, when the post at Astoria was given up, and that this occupation was rightful as against the United States. That such occupation was rightful as against Spain has already been proved.

But if the allegation of the government of the United States, that its title to Astoria was rightful in 1814 is relied on, then it necessarily follows—setting aside any consideration of the validity of the reasons advanced in 1814 in support of this title—that the Treaty of 1819 could only confer a right to territory south of the settlement of Astoria, and south, also, of the British settlements on the Columbia River, and that the territory north of Cape Mendocino was open to the settlement of other countries than Spain, in 1814.

From these facts it is impossible that the government of the United States can extricate itself without dishonour, if its claim to the whole of the Oregon Territory is insisted on.

It was probably from a knowledge of an intention to set up a claim, founded on the Treaty of 1819, that the American government suspected that the ratification of this treaty was delayed through an intrigue of the British government. But we acted on that occasion as we have done in every transaction with the United States—in perfect good faith, and with the fullest reliance upon the honour of the American government; assuming no fraud or deception on its part, performing our own obligations, and only asserting rights to which we were justly entitled. When Lord Castlereagh received Mr Rush, the American minister, in September, 1819, he read to him part of the despatches of Sir Henry Wellesley to prove that the wishes of the British court had been made known to the Spanish cabinet in favour of the ratification of the treaty. These despatches were dated June 6th and July 6th. In one, Sir Henry Wellesley distinctly expressed his opinion that the true interests of Spain would be best promoted by the ratification. Lord Castlereagh also added, that "the willingness of the British cabinet to accede to the possession of the Floridas by the United States might be inferred from the indirect offer which it had made two years before to mediate between the United States and Spain—an offer which had been declined." It was not then supposed to be possible, that the government of the United States would

attempt, through that treaty, to evade the discussion of the questions which the settlement made by Mr Astor's partners on the Columbia had occasioned, and which were then pending.

From the facts above related, it may be inferred:—

1st, That Spain never occupied, but abandoned the west coast of North America, north of Cape Mendocino.

2ndly, That the country was open to the settlements of other countries than that of Spain—even by the admission of the American government in its assertion of a claim to Astoria in 1814.

3rdly, That the British government in 1792 announced its intention to occupy, and formally declared the annexation of parts of the coast to its own territory, acting in this respect as the government of Russia has done.

4thly, That the establishment at Astoria was a private and unauthorized proceeding.

And 5thly, That the British settlement on the Columbia was the first of a national and legal character recognizable as such by foreign nations.

The extent of the coast claim which the British government was entitled to insist on, in the subsequent negotiations, might have been sustained by the following principles, which were laid down by the American government in its communications with the Spanish minister in 1819:

"1st, That when any European nation takes possession of *any extent of sea coast*, that possession is understood as extending into the interior country to the sources of the rivers emptying within that coast—to all their branches, and the countries they cover; and to give it a right, in exclusion of all other nations, to the same.

"2ndly, That whenever one European nation makes a discovery, and takes possession of any portion of this continent, and another afterwards does the same at any distance from it, where the boundary is not determined by the principles above-mentioned, that the middle distance becomes such course.

"3rdly, That whenever any European nation has thus acquired a right to any portion of territory on this continent, that right can never be diminished or affected by any power by virtue of purchases made by grants or conquests of the natives within the limits thereof."

That is, the British government, on authority of these texts of national law, which are perfectly correct, was entitled to a boundary which should include both banks of

the Columbia River, and all the territory drained by it, including the whole coast line and other rivers, of which possession had been taken by Vancouver, under the orders of his government.

2ndly, By the 7th article of the Treaty of Paris of 1763—which related only to Louisiana and Canada—the line drawn from the source of the River Mississippi to the south, gave to Great Britain all the lands on the east bank of the river, except New Orleans, and secured to France and through it to Spain, the territory west of the same line, as far as the Rocky Mountains or western boundary of Louisiana (ante, p. 11). But the territory of Canada, north of the source of the river (47 deg. 10 min. N. lat.), and north of a line running west from the source of the river, was left as part of Canada, of which it most indisputably formed a portion (ante, p. 7). This clearly appears, also, from the official map engraved in 1757,* and used in the negotiations of 1762. The American and the British titles, at this point, are both derived from the French, and, consequently, what the French government marked in this official map of 1757 as Canada, excluded any subsequent claim to it as a part of Louisiana.

In the treaty made between Great Britain and the United States, nothing west of a line running north from the source of the Mississippi, to the line running due

* M. Duflot de Mofras, whose work on California, published at the expense of the government of France, exhibits no partiality towards the English, refers also to this map, and comes to the conclusion that the claims made by the Americans are without foundation :—

"Pour la limite du sud, le Mexique et l'Espagne ont agi de la même manière : ils ont concédé aux Etats-Unis leurs droits sur les contrées situées au nord du 42° parallèle ; mais il est de toute évidence que le traité des Florides ne saurait porter atteinte à la validité de la convention de 1790, il ne constitue qu'une simple renonciation, et les Etats-Unis en y adhérant, s'étant substitués á la l'Espagne pour le territoire à l'égard duquel cette puissance résiguait ses prétentions, doivent respecter tous les droits qu'un traité antérieur au leur avait reconnu aux Anglais. Si nous avions maintenant à émettre une opinion sur cette question importante, nous ne pourrions, malgré nos sympathies pour les Etats-Unis et notre aversion contre le système d'envahissement de l'Angleterre, nous empêcher de reconnaître que la raison et le droit son cette fois de son coté. Il est même permis de s'etonner que, répudiant sa ténacité habituelle, elle ait fait, aux Americans, dans le cours des negociations, de si larges sacrifices."

west of the furthermost point of the Lake of the Woods, was granted to the United States (ante, p. 7). All, therefore, north of a line running west, from the source of the Mississippi, that is, the country north of a parallel of latitude of about 47 degrees, was English territory, and formed part of Canada, unconceded by any treaty.

But the English government has neither insisted upon its title to the whole of the Oregon, or even to the whole of Canada—the latter of which would have been very prejudicial to American interests. In a treaty signed between the plenipotentiaries of Great Britain and the United States, in April, 1807, it was agreed that "a line drawn north or south (as the case might require) from the most north-western point of the Lake of the Woods, until it shall intersect the 49th parallel of latitude,* and from the point of such intersection due west, along and with the said parallel, shall be the dividing line between his Majesty's territories and those of the United States, to the westward of the said lake, as far as their respective territories extend in that quarter—*provided* that nothing in the present article shall extend to the north-west coast of America, or to the territories belonging to, or claimed by either party, on the continent of America, to the westward of the Stony Mountains." Unlooked-for events prevented the ratification of the treaty, and the subject was not again discussed until 1814.

In 1818 a convention was ratified between Great Britain and America, after a long negotiation, in which the facts already related formed the basis, by which the claims of both countries were subjected to a temporary compromise. It was agreed that a line should be the northern boundary along the 49th parallel of latitude, from the Lake of the Woods to the Rocky Mountains, and that the country westward of the Rocky Mountains should be free and open for

* The argument of Mr Greenhow (p. 281), that the reason was ill considered for adopting the 49th parallel of latitude, namely, the Treaty of Utrecht, and the acts of the commissioners, is founded on so manifest an error respecting the extent of Canada, that it does not merit discussion. The adoption of the 49th parallel was a just arrangement, to both Great Britain and the United States, though it gave less than the former had a title to insist on. Mr Jefferson was perfectly satisfied with it, but feared that the allusion to any claim extending to the coast would be offensive to Spain.—(Greenhow, p. 282.) This was in 1807, *after* the purchase of Louisiana.

the term of ten years from the date of the convention to the vessels, citizens, and subjects of both powers, without prejudice to the claims of either country.

In 1826 the negotiations on this subject were again renewed. It was proposed by Mr Canning and Mr Huskisson that the boundary beyond the Rocky Mountains should pass from those mountains westward along the 49th parallel of latitude to the north-easternmost branch of the Columbia River, and thence down the middle of the stream to the Pacific. This was not agreed to.

In 1826 Mr Gallatin, on the part of the United States, proposed, that, should the parallel of latitude 49 deg. cross any of the branches of the Columbia, at points from which they are navigable by boats to the main stream, the navigation of such branches and of the main stream should be perpetually free and common to the people of both nations. —(Greenhow, p. 346). This proposal fell far short of the British claims, but a very liberal counter offer was made by the British government, to abandon certain territory extending to the Pacific and the Straits of Fuca—from Bullfinch's Harbour to Hood's Canal; and to stipulate that no works should be erected at the mouth or on the banks of the Columbia, calculated to impede the navigation of the river.—(Greenhow, p. 347.)

The *ultimatum* of the government of the United States was communicated by Mr Clay to Mr Gallatin in these terms:—

"As by the Convention of 1818 the 49th parallel of north latitude has been agreed to be the line of boundary between the territories of the United States and Great Britain east of the Stony Mountains, there would seem to arise from that stipulation a strong consideration for the extension of the line along the same parallel, west of them, to the Pacific Ocean. *In bringing themselves to consent to this boundary, the government of the United States feel that they are animated by a spirit of concession and compromise*, which they persuade themselves that of Great Britain cannot but recognize, and ought not to hesitate in reciprocating. You are then authorized to propose the annulment of the third article of the Convention of 1818, and the extension of the line on the parallel of 49 deg. from the eastern side of the Stony Mountains, where it now terminates, to the Pacific Ocean, as the permanent boundary between the territories of the two Powers in that quarter. This is our *ultimatum*, and you may so announce it. We can consent to no other line more favourable to Great Britain."

The claims of the government of the United States rested in the year 1818 on the visit of Gray to the coast in 1792, the exploration overland of Lewis and Clarke, and the establishment on the Columbia River, chiefly made by the British partners of Mr Astor, and on "the virtual recognition of the title of the United States in the restitution of Astoria"(!)—(Greenhow, p. 348). Not one of these proceedings, upon any known or recognizable principle of international law, or *having any respect for its own laws*, entitled the government of the United States to make any claim whatever to territory on account of them. Yet not merely were they set forth in this *ultimatum* to justify such a claim—while professing to act in "a spirit of concession and compromise"—but actually to exclude the government of Great Britain from possessions which it legally held.

Mr Huskisson stated the extent of British claims in these words:—

"Great Britain claims no exclusive sovereignty over any portion of the territory on the Pacific between the 42nd and the 49th parallels of latitude; her present claim, not in respect to any part, but to the whole, is limited to a right of joint occupancy in common with other states, leaving the right of exclusive dominion *in abeyance*, and her pretensions tend to the mere maintenance of her own rights in resistance to the exclusive character of the pretensions of the United States.

"The rights of Great Britain are recorded and defined in the Convention of 1790; they embrace the right to navigate the waters of those countries, to settle in and over any part of them, and to trade with the inhabitants and occupiers of the same. These rights have been peaceably exercised ever since the date of that convention; that is, for a period of nearly forty years. Under that convention, valuable British interests have grown up in those countries. It is admitted that the United States possess the same rights, *although they have been exercised by them only in a single instance, and have not since the year* 1813 *been exercised at all;* but beyond these rights they possess none.

"In the interior of the territory in question the subjects of Great Britain have had for many years numerous settlements and trading-posts; several of these posts are on the tributary streams of the Columbia; several upon the Columbia itself; some to the northward, and others to the southward of that river. And they navigate the Columbia as the sole channel for the conveyance of their produce to the British stations nearest

the sea, and for the shipment of it thence to Great Britain; it is also by the Columbia and its tributary streams that these posts and settlements receive their annual supplies from Great Britain.

"To the interests and establishments which British industry and enterprise have created Great Britain owes protection; that protection will be given, both as regards settlement and freedom of trade and navigation, with every attention not to infringe the co-ordinate rights of the United States; it being the desire of the British government, *so long as the joint occupancy continues*, to regulate its own obligations by the same rules which govern the obligations of every other occupying party."

In this statement, which contains an excellent summary of the reasons why the navigation of the Columbia River is required, admissions were made, favourable to American interests, which were erroneous. The allusion to the exercise of rights by the United States, previously to the year 1813, was founded on a mistake. No rights had been exercised, and no settlement within the territory had been authorized by the American government. The establishment of Astor was a mere private speculation. The admission, also, respecting joint occupancy, though now binding on us, was an extension of the error, in the construction of the Treaty of Ghent, under which Astoria had been delivered up to the United States on the conclusion of the war in 1814. In truth, the errors of fact that were committed in the course of these negotiations, constitute the only title of the government of the United States. Without our admissions, from which, however erroneous, it would not be honourable to recede, it would not have had the slightest pretence to carry on any negotiation on this subject. What we have conceded is all they are strictly justified in claiming.

On the 6th of August, 1827, a convention was signed, renewing the provisions of the former one of October 20, 1818, and extending it for an indefinite period, until either party should annul it, on giving a year's notice.

Mr Farnham, however, perfectly forgetful that the American government, in its negotiations respecting the establishment at Astoria, has admitted that the Oregon Territory was open in 1813 to the occupancy of other countries than that of Spain, affirms, with singular inconsistency, that an American title adverse to Great Britain—and in fact to Spain—was formed through that establish-

ment, and, also, that the sovereignty to the Oregon is vested in the government of America through a Spanish title (p. 52). In other words, that the American government possessed the sovereignty of the country in 1813, and did not possess it until 1819. His arguments to establish both these positions are equally long, and the one is perfectly conclusive against the other:—

"Drake (says Mr Farnham), an English pirate, entered the Pacific Ocean, and pretended to have visited the coast between the latitudes 37 deg. and 48 deg."——"Elizabeth, while she knighted him, remunerated the subjects of the Crown of Spain for the piracies he had committed. From such men's acts the laws of nations recognize no rights of nations to arise, because if it be still insisted that Drake ever saw this coast (!), and that his discovery was for the benefit of the crown of England, still it avails nothing, inasmuch as Spain had already discovered and explored it several years before; and, in the fourth place, because England did not afterwards occupy by permanent settlement, as required by the laws in such cases governing."

If this argument is believed to be a sufficient reply to the English claim, it must be equally sufficient against any Spanish title. Whatever doubt there may be respecting the extent of Drake's discoveries, it must be admitted that, no permanent settlement having been made, there did exist a right in any other country to step in and occupy the land discovered. But this objection to any claim resting on *mere* discovery applies, also, to the Spanish title, for it is a known and admitted fact that, whatever may have been the discoveries of Spanish officers, no Spanish settlement was ever made north of Cape Mendocino (ante, p. 14). The question, therefore, comes back to this point—by what parties, officially authorized to make settlements, was a settlement in the Oregon Territory first made? Or, by whom was an actual occupation of the country first authorised? There is no doubt of the fact that the country was first occupied under the sanction and authority of the British government. If the opportunity at any time existed for the government of Spain to have occupied the country, it never did occupy it, and the country never formed any portion of its "provinces, dominions, or territories." This fact, which is conclusive in support of the British title, affords a perfect answer to another argument set forth by Mr Farnham, founded on the Treaty of Utrecht of 1713. He alleges

that "England for ever quit-claimed to Spain, and warranted for ever to her monarch and his successors, the north-west coast of North America as far as the Straits de Fuca (p. 55). Need more be said than that there is nothing in the treaty even indirectly referring to the north-west coast of America! But as one groundless assumption leaves the argument incomplete, another is needed, and, therefore, it is added, that—

"The title of Spain to those countries and seas was not only exclusive, so far as exclusive discovery could give a title, but that the guarantees of England and the other Powers at the Convention of Utrecht rendered all further acts, such as subsequent acts of occupancy, &c., unnecessary to perfect that title through all after time. For, by these guarantees, England and the other Powers waived the necessity of occupancy, &c., required by the law of nations to perfect the inchoate rights of prior discovery; and waived, also, the possibility, on the part of these Powers, of acquiring by subsequent *discovery* or occupancy any right in the territories thus solemnly conceded to Spain."

This argument is certainly a singular jumble of contradictions and unauthorized assertions. The treaty, it is said, is still binding. If so, all the parties to it are bound to prevent the United States from interfering with, or taking possession of, what undoubtedly were Spanish territories; for the clause of the treaty cited in support of the argument is, that "neither the King of Spain nor any of his heirs or successors shall transfer or under any pretence alienate from themselves and the crown of Spain any provinces, dominions, or territories in America." If still in force, how came it that Spain alienated the Floridas in 1763? How has the United States become entitled to the Floridas? Was there no alienation in that case? But the argument admits that the Spanish government had no occupation of the country, for it is said, though erroneously, that the British government agreed that acts of occupancy should be unnecessary, and it also admits that "subsequent discoveries" on the west coast might be made: and then it is asserted, without any proof, that the government of Great Britain guaranteed the possession of dominions which Spain did not possess, and the possession of countries which were not discovered! And to make the absurdity complete, this treaty—which it is alleged

was to prevent new discoveries and settlements of America by the English, and, as a consequence of it, its present possession of the Oregon—is held by American authorities not to have been binding on the government of Spain to prevent the alienation, to the government of the United States, of any territory it might have possessed in Western America!

The treaty is entirely misunderstood by Mr Farnham; but his observations on it are valuable to prove how well satisfied he is that the title he endeavours to sustain is utterly invalid, and how perfectly well aware he is of its exact defects.

After having involved himself in absurdities and contradictions in his inferences from the Treaty of Utrecht, Mr Farnham turns to the Treaty of Paris of 1763, and affirms that this also has been violated by the British government.

"France (says he) had many reasons for obtaining from that unscrupulous neighbour (Great Britain) a guarantee of her territories 'west of the Mississippi,' and did so in the Treaty of Versailles (1762) as far as 49 deg. north [47 deg. 10 min., or source of the Mississippi; ante, p. 6.] If, therefore, she owned any land beyond the Mississippi valley, she ceded it to *France*. If she did not, she ceded her the right, as against herself, of *acquiring* title to all the territory lying 'west of the Mississippi and south of the 49th parallel of latitude' [south of the source of the Mississippi]. How will British sophistry maintain her claim [the claim of Great Britain] to the Oregon, as against the grantees of France? To this treaty the United States, by the purchase of 1803, have become a party; and as by the Treaties of Utrecht and Versailles, England has abandoned, in the one case, to Spain, as high as latitude 48 deg. north on the north-western coast of America; and, in the other case, as high as 49 deg. on the same coast; it becomes difficult to see with what pretence of right she now comes forward to recover what she has thus solemnly, by two several treaties, deferred to others."—"Although England, by virtue of the Treaties of 1713 and 1763, was precluded from gaining any right of sovereignty from discovery or occupation, the United States have laboured under no such disability."

To this argument the reply is complete. By the Treaty of 1763 the boundary between Louisiana and the British possessions was "irrevocably" fixed. At that time the western boundary of Louisiana did not extend beyond the Rocky Mountains (ante, p. 11). The country beyond the

mountains did not belong to France, and therefore this treaty had no reference to it. There was no cession of a right *to acquire* lands beyond the limits of the French possessions, and there is not a word in the treaty to this effect.

It has already been shown that the Treaty of Utrecht has no reference whatever to the Oregon; yet these two arguments on the Treaties of 1713 and 1763 have been set forth as conclusive against the claims of the British government. They do not in the slightest manner disturb the British title to the Oregon Territory founded on prior occupation—setting aside any discussion of the question of prior discovery—and Mr Farnham actually proves that Spain,—in consequence of its not having occupied the country—was not in a condition, in 1819, to confer any title to territory north of Cape Mendocino.

The following is Mr Farnham's own summary of his argument:—

"We own Oregon *by purchase* from Spain, the sole discoverer and *first occupant* of its coast; *by purchase* from France, to whom England, by the Treaty of Versailles, *relinquished* her claim to it; and by our own discovery and *prior occupancy* of the Columbia River. Throughout this work incontrovertible authorities are relied on for historical facts and for the construction given to the laws of nations. Out of her own mouth is Britain judged; and if this pamphlet shall serve to convince my countrymen of the insolent selfishness of Great Britain—her grasping injustice—her destitution of political honesty—and serve to show a necessity for the people to act for themselves, and to expect from the hands of their government at Washington the maintenance of the rights and honour of their country; the author (!!) will feel richly rewarded for whatever labour he has bestowed in collecting and arranging the evidence of their rights to the Oregon Territory—the whole of it, and nothing less."

It is not satisfactory to reprint such very ridiculous, unprovoked trash, but it affords a very good example of the malignity of certain orators in America, and of the grave charges which are made to excite popular opinion against the government of this country.* The assertion that

* Persons who have remained a few months in America must have been often surprised at the constant repetition of paragraphs in the public papers accusing the English government of the expenditure of enormous sums of money for the acquisition of new

Spain was "the first occupant" of the coast is contradicted by Mr Farnham himself in his elaborate argument to prove that the Treaty of Utrecht rendered any occupation of it by the government of Spain needless. That the English government relinquished the coast to France, by the Treaty of 1763, is impossible, for that treaty did not relate to territory not then occupied by the French; and Mr Farnham's own argument is directed to prove that the western coast, at that time, belonged to Spain. The facts of Gray's discoveries and of Astor's settlement need not be re-stated, having been already very fully investigated. The claims of Great Britain are neither unjust, selfish, nor dishonest; and they have sprung from events, the present results of which were not foreseen. If American claims have come into competition with them, it has arisen from no act of the British government—and if they are opposed, it has not been so far as Great Britain is interested, for the purpose of aggrandizement, or in order to assert rights which are either untenable, or, unjust.

The extreme north-western part of the coast of North America forms a portion of Russian territory. The title to it is partly that of discovery, and, partly, that of occupation. The chief establishments, if not the only

territory, or in intrigues for this purpose. Sometimes we are said to be on the point of seizing Texas; at other times, that we have bought California, &c. Yet the writers of these articles are perfectly well aware that no money can be expended by the British government without the assent of parliament, and that the purchase of territory without such assent is impracticable. The impolicy of the intrigues with which we are charged does not occasion the expression of the slightest doubt of the absurd designs imputed to us. One of the latest examples of this kind, appeared in a Galveston (Texas) newspaper in the month of February last. A member of Congress appears to have assumed to himself some credit, for having had "most fully explained to him *the plans*" (!) of the American envoy, General Duff Green, who had convinced him of some design of the British government, on Texas, by producing a copy of an agreement made *before* the declaration of the Independence of Texas, between the government of Mexico and the British land-holders, by which the proceeds of the public lands of Mexico, in California, Texas, and elsewhere, were pledged as a security for the payment of the public debt. The copy of this agreement is said to have been obtained by the envoy *from Mexico*, which said envoy "was of opinion that Santa Anna, sustained by British influence, in Mexico, would prevail." Now it so happens, that this mysterious document, obtained *from Mexico*, by the diplomatic agent of the government of the United States, has been, several times, freely and without reserve, published

ones, formed on it, were made subsequently to the year 1798, when the coast from the 55th degree of north latitude, northwards, was conceded to the Russian American Company. The company was authorized to explore and to bring under subjection to the Imperial Crown, any other territories in America, not previously attached to the dominions of some civilized nation. — (Greenhow, p. 269). So that the Russian government, six years after the dispute between Spain and Great Britain respecting Nootka Sound, acted on the principal admitted in the convention of the Escurial, and directed establishments to be formed on vacant and unsettled parts of the coasts.

On the 17th of April, 1824, a convention was signed between the government of the United States and Russia, by the 3rd article of which it was agreed, that the citizens of the United States should not form settlements to the north of 54 deg. 40 min. of north latitude, and that the subjects of Russia should not form establishments to the south of that parallel, but the territory south of 54 deg. 40 min. was not claimed, in the convention, as belonging to the United States. The principle upon which this convention proceeded, in its recognition of the Russian title, cannot be distinguished from

---

in England, and, to the writer's own knowledge, a copy of it, printed in England, was in the possession of persons in Galveston in the month of May, 1842—three years before the American envoy could produce his copy! The assertion of the interference of the British government in the late revolution in Mexico is utterly unfounded, and was a most indecent statement to be made by a person who, on going to Texas, held a diplomatic office under a government at peace with Great Britain.

Nothing but the grossest ignorance could induce any person to imagine that the British government, having recognised the independence of Texas, would instigate measures hostile to it. The considerations of propriety, or of necessity, it matters not which, which occasioned that political act, have had more force since it occurred than they previously could have had. So far from revoking that act, it would be advisable that Mexico, if it were possible, instead of continuing hostilities, should at once give to Texas the territory across the north of California, on the condition of abolishing slavery. Texas, with free black immigrants, would soon attain the greatest prosperity, and at the same time, would thus secure the certain abolition of slavery throughout the continent of America. A new nation would be formed, which would secure that adjustment of political interests in America, which the government of Mexico, under a far different system of administration than it is ever likely to possess, might have contemplated.

that on which the claim of the British government to part of the coast is founded. But if the government of the United States anticipated the squeezing out of British claims by this union with Russia, it was checked by the convention, signed Feb. 1825, between Great Britain and Russia, by which the boundary between the Russian and British territories was very distinctly defined, and the intended effect of the convention by which the United States so sought to prejudice the British claims, was checked.

An argument has been advanced in favour of the claim of the United States on the ground of *contiguity*. But it is one of even more force, if it has any, in favour of Great Britain than of the United States. It ought to mean, if anything, that part of the territory claimed is essential to the perfect enjoyment of contiguous territory. If this was what was meant, then the western trade of North America, being chiefly that of peltries obtained by the English, and exported from Fort Vancouver, on the Columbia, an access to the river is necessary to those engaged in it.

A political writer, however, has lately discovered "that the only real claim of the British government rests on contiguity!" What does the doctrine imply? If a title by occupation exists, it is idle to assert contiguity as entitling an adjoining nation to interfere and to deprive their neighbours of their possessions. If there is no occupation, then—without regard to contiguity—an undisputed right to occupy may be claimed by any country. In the former case, the doctrine of contiguity would be the assertion of a right to commit an unjustifiable act of hostility; and, in the latter case, it would be inapplicable. The same writer who thus limits our rights by this unmeaning doctrine, applies it thus:—Spain had a right, by contiguity, to go north; Russia to go south; and France to go west. Part of the French title is vested in the British government; part in that of the United States, which is now also invested with the Spanish title to go north. Thence it is inferred that our title, by contiguity, ought to be limited by the parallel of 49 deg. north latitude. But this conclusion is erroneous, admitting the application of the doctrine. The French title granted to the British commences at the source of the Mississippi, and runs along the parallel of 47 deg. 10 min. (p. 32.) The territory included between the parallels of latitude 47 deg. 10 min. and 49 deg., in-

cluding about 20 deg. of longitude, was a mere voluntary concession to the government of the United States in 1818. But this concession, existing under a temporary convention, does not exclude British rights, even of contiguity, existing in 1818, to territory west of the Rocky Mountains, and lying between 47 deg. 10 min. and 49 deg. So that, if this absurd doctrine is applied to this case, the true facts authorize a conclusion in favour of a claim to territory, far more extensive than those who assert the doctrine have allowed.

But the proposed application of the doctrine is, in another respect, favourable to British claims, if it is, as it appears to be, according to some of those who assert it, a right to acquire, by priority of occupation, territory to which no government has a prior right. Spain, it is said, had a right to go north, Russia to go south, and the United States to go west. But Great Britain, being the first to go west, excluded the right of Russia to go south. By thus obtaining a right north of the vacant territory, in the vicinity of the Columbia River, it had the right of contiguity, which Russia previously had, to go south. It went south, as far as the Columbia, before the government of the United States had made an occupation from the west—for Astor's settlement was not within the jurisdiction of the United States—and thus, through the doctrine of contiguity, has a right to the Columbia. These are legitimate conclusions from the facts, in applying the doctrine. The writer, however, regards the doctrine as absurd in one state of facts, and as most mischievous, dishonest, and unjust when applied in order to interfere with existing rights.

During the time that the election of the present President of the United States, Mr Polk, was pending, the "ticket" of his party, in some States, had printed on it a declaration made by him, that "the fixed policy of the American government should be, not to permit Great Britain, or any other foreign Power, to plant a colony, or hold dominion over any portion of the people or territory either of Texas or Oregon." As soon, therefore, as it was practicable, after his election, with all the responsibility of office before him, with a full knowledge that negotiations on the Oregon were pending, that the correspondence on it had not terminated, and, in defiance of all civilized usages, this declaration was repeated, in the most rash and offensive

manner. Apparently determined to put an end to all further communication between the governments of the two countries, he appealed, at the moment of his commencing the duties of his office, to popular tumult for support in a policy of aggression which only has its parallel among those acts of despotic governments which have produced the most deplorable national calamities.

It will, says the new President, be his duty—and, of course, also, of the cabinet which he himself was about to name—to assert and maintain, by all constitutional means, the right of the United States to that portion of territory which lies beyond the Rocky Mountains. Our title to the country of the Oregon is clear and unquestionable, and *already are our people preparing to perfect* that title by occupying it by their wives and children."

There was no alternative left to the British parliament by such a declaration. It was necessary to assure those who govern the people of the United States, in the most formal and solemn manner, that they erred in supposing that our national honour, or the ordinary courtesies of civilized nations, can be violated without producing the most efficient resistance which such hostile proceedings demand. This assurance they have received. The negotiations which have been carried on since 1814, are an admission of the existence of certain British rights. Such rights were acknowledged when the terms of the purchase of Louisiana, in 1803, were agreed upon. Neither in 1814, nor in 1818, nor in subsequent negotiations, has it been denied that the British government has rights to part of the Oregon.

The object of certain politicians in America in denying the existence of such rights, and the consequences that may be produced by their refusal to listen to the amicable proposals that have been made, are exceedingly well described by Mr Sturgis in the following passages of his pamphlet:—

"There are, at the present time, numerous establishments of British subjects—all in the service of the Hudson's Bay Company—scattered from the mouth of the Umqua River in lat. 43 deg. 30 min. northward to the Russian traders. Over these, by act of parliament, Great Britain extended the laws of Canada and the jurisdiction of her courts, and authorised the appointment of the necessary officers for executing these laws and enforcing this jurisdiction. But this was done with the express reservation of all the rights secured to the United

States by the Convention of 1818, and no attempt has ever been made by the British authorities to interfere with American citizens in that quarter. The Americans are settled in the immediate vicinity of the British establishments; in fact, the people of both nations are in a manner mingled together. The number of American settlers is on the increase by continual immigration from the States. They hold the lands on which they settle only by the tenure of possession, and are governed only by such laws or regulations as they choose to adopt.* If the controversy about this territory is to remain in abeyance, it may be necessary for Congress to pass laws for the government of American citizens residing within it; but how such laws are to be executed cannot readily be perceived; and what is to be the result of such an anomalous state of things I will not venture to predict. No stronger proof, however, need be adduced of the ignorance, or something worse, that has prevailed on this subject in our national councils than the fact that since 1818 repeated attempts have been made in Congress —bills reported and debated—for establishing a territorial government, and extending the laws and jurisdiction of the United States over the *whole* 'territory of Oregon.' Such a measure would have been a gross violation of existing treaty stipulations, and fraught with all the consequences of a hostile act against a friendly and powerful nation.

"The first day of the present session of Congress, Dr Duncan, a member from Ohio, gave notice of his intention to bring in a bill for taking immediate possession of the whole 'Territory of Oregon.' He subsequently introduced a bill for this purpose, which was referred to the committee upon the territories, and by them amended and reported to the house, when it was ordered to be printed. This bill provides for taking possession of the whole region west of the Rocky Mountains, from and at 42 deg. to 54 deg. 40 min., and extending over it our laws and jurisdiction. Can any man in his sober senses believe that Great Britain will stand tamely by and see such a measure carried out? She has repeatedly claimed and maintained rights in this territory before the whole civilized world—she has

* It has been argued that the grant to the Hudson's Bay Company gives no power to the company to aequire or to give a title to land. This, however, does not prevent the occupation of the country by them, on the part of the British government, for their authority legally extends over it. Nor would the fact of the Americans having no legal title to the lands they cultivate within the disputed territory, weaken the title of their government—a title which is perfectly independent of private rights, as well in its case, as in that of the British government.

enjoyed these rights, and exercised undisturbed authority within the disputed limits, nearly half a century. Hundreds of her subjects have settled and are now living there under her laws. Is it possible—is it within the scope of possibilities—that a nation that more than fifty years ago expended millions of dollars in preparing to redress an alleged wrong done to one of her subjects, under doubtful circumstances, and to regain a single spot, said to have been taken from that subject at Nootka, within the territory in question—is it possible that, with her pride and power apparently undiminished, she will now permit the *whole* territory to be taken possession of, and her subjects compelled to submit to foreign authority and be forcibly expelled from their homes without even a struggle? There is not the shadow of a doubt in my mind that such an attempt—made and persisted in—would cause an immediate rupture, and bring on a war between the two countries, as surely as if we were to take possession of the island of Jamaica, or the city of Montreal. There are, I doubt not, in some parts of the Union, political aspirants and political demagogues—men of desperate fortunes—who believe that any change would, to them, be for the better, and, therefore, desire to provoke a war with Great Britain, reckless of consequences to the country so long as their individual interests are promoted. But I hope that the number of such is small, and I trust that their counsels will not be listened to. This controversy may easily be made the pretext for a war with Great Britain, if war is desired; but I repeat that it is eminently one to be settled by negotiation. If this cannot be done, let no other steps be taken at present. The British have now a decided superiority in that quarter, but emigration is constantly changing the relative situation of the parties in favour of the United States, and a few years hence she will be better able to support her pretensions by force than she is at the present time. But it is idle to speak of force. A resort to it can never be necessary. Let the able negotiators who now have this matter in charge examine it with reference solely to its own merits—regardless of the clamours of ignorance, or the suggestions of selfishness—and let them discuss it with the manly frankness and conciliatory spirit that guided the distinguished diplomatists who settled the North-eastern Boundary, and it can scarcely fail to be adjusted to the satisfaction of the vast majority of the intelligent people of both nations."

In another passage Mr Sturgis remarks:—

"Some of the objections made by the British Commissioners to our claims to the *exclusive* possession of the whole territory cannot be easily and satisfactorily answered, and some of their

objections are unfounded and frivolous, the mere skirmishings of diplomacy, and unworthy of high-minded diplomatists; but it must, I think, be evident to any one, who looks carefully and impartially into the whole matter, that *some* of the pretensions of each party are, to say the least, plausible; and that, according to the rules established among civilized nations, in similar cases, each has some rights which should be adjusted and settled by compromise and mutual concesion." *

In the state above mentioned the question at this time remains. Whatever concession the facts of the case admit of, will be perfectly consistent with the honour and the interests of the British government. But hitherto the American government has not shown the slightest title to concession, or received in an amicable spirit the concessions which have been made, nor has it established its right to the territory which it demands.

Notwithstanding the remarks of American writers to the contrary, the British government has acted with great temper and moderation. It has not placed its case on extreme rights, and it has been actuated by a very sincere desire to maintain friendly relations with the United States. The errors of fact which were committed in the course of former negotiations, and of which the Americans complain, have been upon very immaterial points, not in the slightest degree affecting the main question—so far as American interests are involved in them.

It is greatly to be lamented, however, that in America it should have been the interest of dishonest and violent politicians to have adopted a tone of discussion upon the subject opposed to its fair settlement. It is not honourable, while the title to the territory is undetermined between the respective governments, to urge measures to *populate* it with American citizens, in order to give facilities for its occupation at a future period. Such recommendations do not indicate a conviction of the validity of the claim insisted on. America, as well as Great Britain, has an interest in the establishment of a settled government in that part of the world—in marking out the limits of legal possession—and in rearing a population which, however much they may differ respecting the system of govern-

* Mr Sturgis proposes a line, as the boundary, through the Straits of Fuca. A question of compromise is not within the means of a private person to decide, and there is no advantage in discussing it.

ment which they may prefer, shall look to the future, as bringing the fruits of a peaceful, generous, and civilized intercourse. The dispute is one that ought not to excite the exhibition of temper or of passion. It does not, as yet, affect the trade, fortune, or interests of a single American.* The ambition of both governments ought to be to decide it, so that peace—the greatest glory of civilization—may be preserved. That this will be the endeavour of the British government there can be no doubt. Those who, upon its part, conduct the negotiation will make it from a sense of honour and a care for the interests of the world, and they will be sustained by the mighty national resources, which allow of the concessions that have been made, and authorize them to insist upon what is just.

It is stated, and probably correctly, that the British government has offered to the government of the United States to submit the dispute to the arbitration of some foreign power. Nothing could be more proper, and no measure could be suggested better calculated to terminate it, amicably and satisfactorily. Some frantic American politicians may oppose it, and may claim the credit of very patriotic motives if they succeed in continuing what will soon become a very idle and useless discussion; but even these men will be the first to be condemned by their own countrymen, when the consequences of their opposition shall interfere with the honourable rewards of labour, and those fruits of commerce which follow in the train of a generous and enlightened system of diplomacy.

---

* It is said to be "the true policy of the United States, by all lawful means, to resist the extension of European dominion in America, and to confine its limits and abridge its duration, wherever it may actually exist."—(Greenhow, p. 335, n.) Those who are quite as capable of forming an opinion as Mr Greenhow, may think that the existing European authority in America contributes beyond all things to the maintenance of the Union of the States, and it certainly has the most favourable influence on the political morality of public men in America.

INDEX.

LONDON:
PRINTED BY BENNELL AND WEIGHT,
LITTLE PULTENEY STREET.